

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT KURT SCHERER, No. Civ. S-04-0109 DFL GGH

Plaintiff, Memorandum of Opinion
and Order

v.

HOME DEPOT U.S.A., INC.,
KRAUSE, INC., AND DOES 1-100,

Defendants. /

Plaintiff Kurt Scherer moves for a new trial. Under Fed. R. Civ. P. 59(a), the court may grant a new trial "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States." "If, having given full respect to the jury's findings, the judge on the entire evidence is left with the definite and firm conviction that a mistake has been committed, it is to be expected that he will grant a new trial." Landes Const. Co., Inc. v. Royal Bank of Canada, 833 F.2d 1365, 1371-72 (9th Cir. 1987).

1 Plaintiff's rambling sixteen-page motion, which contains
2 not a single citation to authority, is largely devoted to
3 complaining about the court's prior evidentiary and procedural
4 rulings, but it provides no reasoned basis for reconsidering
5 those rulings.¹ Despite being given multiple opportunities to
6 make an adequate proffer, plaintiff failed to make a coherent
7 proffer let alone carry his burden of demonstrating that any
8 other ladder collapse case was substantially similar, and thus
9 relevant, to this one.

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11 Notably absent from plaintiff's motion is any argument
12 that, based on the evidence presented at trial, the jury should
13 have reached a different verdict. Far from being against the
14 clear weight of the evidence, the jury's verdict in this case
15 was reasonable and sound. Plaintiff failed to prove that the

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19 ¹ Plaintiff also makes the novel suggestion that the jury
20 committed misconduct by considering alternative explanations for
21 Mr. Scherer's accident. Scherer submits a declaration from
22 juror Steven C. Ziegler stating, among other things, that
23 "[d]uring our deliberations we considered something else caused
24 the accident, such as Mr. Scherer having accessed the roof and
missed a step when descending." Decl. of Steven C. Ziegler ¶ 5.
Scherer implies that it was improper for the jury to have
considered possible accident scenarios other than hinge collapse
and slide out.

25 Plaintiff apparently fails to grasp that he bore the burden
26 of proof at trial. Defendants did not have the burden of
proving that the ladder slid out; rather, plaintiff had the
burden of proving that it collapsed. It was entirely
appropriate for the jury to consider whether there might be
other possible explanations for the accident in the process of

1 ladder collapsed. In fact, evidence presented by plaintiff
2 himself seriously undermined the collapse theory. One factual
3 issue in the case was the disagreement among the experts as to
4 whether a multimatic ladder could collapse under load - that is,
5 with the weight of a person pressing on the hinges. Plaintiff
6 took the risk of attempting a live demonstration of ladder
7 collapse. Defendants objected to the demonstration on the
8 ground that it was tantamount to a further experiment that
9 should have been undertaken during the discovery process.
10 Plaintiff strenuously argued that his case would be severely
11 injured unless he could show the jury that a multimatic ladder
12 could collapse under loaded conditions. Plaintiff was all too
13 correct. The court permitted the demonstration. But though his
14 engineering expert bounced up and down on the ladder while the
15 attorney pulled on the release lever with all of her might and
16 main, trying to make a loaded ladder collapse for the jury, the
17 hinges doggedly held. Many trials have a single dramatic moment
18 on which an entire case may crumble and fall. This was just
19 such a moment.

20 Based on the evidence, judgment for defendants was a
21 reasonable verdict - perhaps the only reasonable verdict - for

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28 deciding whether plaintiff's explanation was supported by a
preponderance of the evidence.

1 the jury to reach. Plaintiff's motion for a new trial is
2 DENIED.

3 IT IS SO ORDERED.
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Dated: April 9, 2007
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6 /s/ David F. Levi
7 DAVID F. LEVI
8 United States District Judge
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